



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 26, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0422

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 4	4.010 - Employee Time Off 1. Employee Time Off is Regulated	Not Sustained (Unfounded)
# 5	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Unfounded)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee was potentially stealing time and violated policy by not attending work.

SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint concerning Named Employee #1 (NE#1). The complaint specifically alleged that NE#1 was an "absentee employee" and that he may have been "outright stealing time." The anonymous Complainant alleged that NE#1 took steps to falsely represent that he was working when he was not in actuality doing so, as well as that NE#1 deliberately concealed his calendar so that his whereabouts were unknown. Lastly, the Complainant asserted that his actions were widely known throughout the Department and that multiple SPD supervisors accordingly failed to report NE#1's misconduct to OPA.



A. Criminal Investigation and Decline to Prosecute

Given the nature of the allegations, OPA referred this matter back to SPD for criminal investigation. The investigator noted that NE#1 was a Captain at time times of these allegations, which meant that he was salaried, did not have a fixed schedule, and did not receive overtime pay. The assigned criminal investigator searched for key card access by NE#1 into Department facilities. While some of the relevant data was lost, the investigator was able to determine that NE#1 generally entered SPD buildings several times per week. The investigator performed a spot check of NE#1's office and concluded that, while it appeared that someone had worked there over the course of the previous month, it did not seem that NE#1 was in the office very often. The investigator reached this conclusion because there was paperwork on NE#1's desk that was well outstanding.

The investigator reviewed NE#1's computer usage history. The investigator determined that NE#1 logged on approximately six days per week and, from a review of NE#1's history, he completed work on those occasions. The investigator noted that there were six days for which NE#1 was paid but did not log into the system; however, the investigator indicated that there were 58 other days that were not paid days but where NE#1 logged into the system and performed work. Lastly, the investigator spoke to individuals in NE#1's unit. They noted that they rarely saw him in the office, but also confirmed that he was responsive when called and/or emailed. Ultimately, the criminal investigator opined that NE#1 would attribute his lack of attendance at work to his ongoing responsibilities as president of the Seattle Police Relief Association (SPRA).

The completed criminal investigation was sent to the City Attorney's Office for review. No charges were filed against NE#1. The case was then returned to OPA.

B. OPA Investigation

As part of its investigation, OPA obtained the records for NE#1's cell phone and Department email usage over a one-year period. Both confirmed that he made phone calls and sent and received emails and texts throughout that time.

OPA reviewed the Captains' expectation memo issued by the former Deputy Chief of Operations. Most relevant to this case, the memo stated that: (3) it was understood that Captain roles had scheduling flexibility and that work arrangements should be agreed upon by the Captain and their bureau commander; and (4) "Department work should normally occur at a Department facility unless otherwise arranged between the Captain and their bureau commander."

OPA also reviewed the two memos sent by NE#1 to the Assistant Chief, detailing his work for the SPRA, the benefits of that work for the Department, his request for a special assignment, and, in the alternative, his request for an alternative Captain role to allow him fewer direct reports and more schedule flexibility.

OPA further determined that the SPRA is a non-profit organization dedicated to providing benefits, emergency financial relief, low-interest loans to officers. OPA confirmed that NE#1 did not take a salary for his work for the SPRA.

Lastly, OPA interviewed the Assistant Chief of the Criminal Investigations Bureau, the Deputy Chief, and several of NE#1's direct reports during the time in question.



1. Assistant Chief's Interview

The Assistant Chief said that, upon taking her role, she met with the Captains assigned to the Investigations Bureau and orally informed them of her expectations. She discussed her vision of how they would lead and how she envisioned that they would operate. She told them that their responsibilities as Captains were to support their employees and to ensure that they had the tools, training, and resources to be successful. She indicated to OPA that she told the Captains that they were expected to respond to emails and phone calls and to monitor their direct reports (Lieutenants). She said that she reiterated to the Captains, including to NE#1, the expectations articulated by the Deputy Chief concerning work hours – approximately 8:00 a.m. to 4:00 p.m. Monday through Friday – and that Captains would be in the office most days. She said that she was “very clear with [her] expectation that [NE#1] was there for his people and that he was responsive.”

The Assistant Chief said that, over time, she became aware that NE#1's work attendance was an issue within the unit. She said that she spoke to him about this and his response was that he was doing “incredibly important work” for the Seattle Police Relief Association (SPRA), a non-profit organization. She said that she told NE#1 that his work as a Captain came first and again articulated her expectations regarding his presence at the office. She told OPA that his attendance would improve for a while after every conversation and then he would later revert back to his prior behavior. She recalled telling him that, while she understood how important the SPRA work was, if he did not show up to work it could become an “OPA issue.”

The Assistant Chief indicated that, at one point, NE#1 came to her with a proposal to work on the SPRA issues fulltime. After consulting with the Deputy Chief and vetting the request with SPD's Human Resources Director and Chief Operating Officer, the decision was made that this could not occur. The rationale was that allowing NE#1 to do so during SPD work hours could constitute a gift of public funds. She said that NE#1 made a second request that he be transferred to a unit with fewer responsibilities in order to continue to work on the SPRA issues. He was eventually moved to the Collaborative Policing Bureau, where he had fewer direct reports, but he was still informed that he had to fulfill his SPD responsibilities. She said that she discussed the latter decision orally with NE#1; however, she did not respond to NE#1's written proposals in writing.

The Assistant Chief told OPA that, given NE#1's repeated non-attendance at work, she checked his timecard access. She was told at that time by the Deputy Chief that the matter was being looked at. She stated that she then became aware that an anonymous complaint had been made against NE#1, so she did not make her own referral.

The Assistant Chief acknowledged that NE#1 was always responsive via phone and email. She felt, however, that his lack of a physical presence in the office constituted a violation of SPD Policy 1.020. She felt that NE#1 took advantage of his position as a Captain and “phoned it in.” The Assistant Chief confirmed that there was no documentation of NE#1's attendance and/or other performance issues in writing.

2. Deputy Chief's Interview

The Deputy Chief supervised NE#1 prior to be promoted to that role from Assistant Chief. During that time, he spoke to NE#1 on several occasions about being present at work. NE#1 improved but the Deputy Chief was later informed by the Assistant Chief that NE#1 reverted to his past behavior. The Deputy Chief felt that NE#1's attendance issues were caused, in part, on his work with the SPRA and the time commitment of being the head of that organization.



The Deputy Chief told OPA that he issued a memo to all Captains concerning his expectations for them. He said that he viewed the Captains as the weakest link in the organization and he wanted them to be more present at work and involved in directly managing others. He said that the memo was not well received but it was necessary. He told OPA that virtually all Captains, except for NE#1, eventually complied with the expectations. He attributed NE#1's non-compliance to his SPRA work.

The Deputy Chief said that NE#1's request to work full time on the SPRA work was denied and that this decision was made by the Chief of Police. He said that he told the Assistant Chief to inform NE#1 of the decision.

With regard to NE#1's conduct, the Deputy Chief did not believe that it constituted stealing time. He felt, however, that NE#1 may have acted contrary to SPD Policy 1.020 given his lack of leadership

3. Direct Reports' Interviews

OPA interviewed three Lieutenants that had been supervised by NE#1. All stated that he was responsive to their emails and calls but that he was rarely if ever in the office. Lieutenant #1 felt that NE#1 was smart and capable; however, Lieutenant believed that he exhibited no leadership in his position and that this was unacceptable. Lieutenant #1 could not say whether NE#1's conduct violated policy or rather constituted a performance issue.

Lieutenant #2 said that NE#1's absence was frustrating and complicated his own ability to supervise. Lieutenant #2 felt that, even among other Captains, NE#1's failure to attend work was an outlier. Lieutenant #2 asserted that NE#1 did not exemplify the leadership expected by SPD Policy 1.020.

Lieutenant #3 said that NE#1's lack of presence was a "running joke" in the unit. Lieutenant #3 felt that it was not a good look for the unit commander to not come to work. However, Lieutenant #3 could not say that NE#1 violated the plain language of SPD Policy 1.020 as he did regularly respond to calls and emails.

OPA also interviewed an Administrative Assistant assigned to the unit. She said that NE#1 was rarely in the office but he was always responsive. The Administrative Assistant did not feel that there was any direction in the office while NE#1 was the commander but that, after he left, a new Captain was assigned there who was more present and active. She felt that this very much improved the unit. She did not opine as to whether NE#1's conduct violated any policies.

4. NE#1's Interview

Lastly, OPA interviewed NE#1. He told OPA that he never learned what was expected from him as a Captain when he was promoted or through any on-the-job training. He said that expectations were never provided to Captains until the Deputy Chief's memo. He said that the first version of the memo was issued in October 2018 and, after discussions with the Seattle Police Management Association, a new memo was circulated by the Deputy Chief in March 2019. After reviewing that memo, he felt that it could impact work he was doing for the SPRA. He accordingly wrote his own memo to the Assistant Chief seeking a special duty assistant working on SPRA issues. He said that this was denied verbally by the Assistant Chief. NE#1 articulated that the SPRA work was important and that aspects of the work, including building new SPRA facilities, directly benefitted SPD.



After further discussions with the Assistant Chief, he said that he would try to be in the office more given the Deputy Chief's memo and the denial of his request to do the SPRA work full time. He felt that this was an agreed upon modified work schedule as contemplated by the Deputy Chief's memo (specifically, points 3 and 4). He said that after the Assistant Chief again spoke with him concerning his attendance in the office, he asked to be moved to the Night Captain role as he felt that this would allow him to best balance his SPD and SPRA work. He recalled one occasion where the Assistant Chief sent him an email regarding his presence at the office.

He also confirmed that, when he was supervised by the Deputy Chief, they discussed his attendance in the office. NE#1 recalled that the Deputy Chief believed in management by being present walking around. Based on those conversations, NE#1 was in the office more. NE#1 also recalled the Deputy Chief telling him that he was one of the best Captains in the Department.

NE#1 said that he was never provided with anything in writing denying him the right to work with the SPRA or indicating that he was violating Department or supervisory expectations. He felt that he was able to do both his job as a Captain and as the SPRA president well. He further noted that other Captains had served in the SPRA role in the past and had been able to do so because of the flexibility of the Captain role. He further said that all of his performance evaluations were positive.

NE#1 did not believe that his lack of presence negatively impacted those under his supervision. When made aware of some of the comments made by the Lieutenants, he said that he understood that this was their perspectives but not something that he agreed with.

Ultimately, NE#1 denied that his conduct violated any SPD policies or the law.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. This allegation was classified based on the possibility that NE#1 may have been paid for time he did not work or for time spent on the SPRA tasks.

As discussed more fully above, SPD conducted a thorough criminal investigation in this allegation and provided the case for the Seattle City Attorney's Office for review. After analyzing the case, the City Attorney's Office declined to charge NE#1 with a crime.

The evidence indicates that NE#1 was regularly logged into the SPD system and that he often did so six days per week. Over a seven-month period that was analyzed, there were six days that he received SPD pay but he did not log into the system. However, there were 58 days identified where he was not paid but still logged into the system. Given his status as a salaried, non-overtime employee, this would not constitute time theft. OPA further determined that NE#1 had cell phone and email usage throughout his workdays, which suggests that he was actually engaging in work activities during that time.

As discussed more fully below, there are legitimate concerns regarding NE#1 virtually never being present in the



office and the impact that this had on his supervisees and his unit; however, this does not constitute criminal conduct. Moreover, all of his direct reports said that they were able to reach him when needed and he was always very responsive. Lastly, NE#1 was not paid for his work with the SPRA, so there is no evidence of him being double compensated.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.) This allegation was classified based on the possibility that NE#1 may have performed work that provided him with personal gain while being paid by SPD.

As a general matter, OPA has issued sustained findings under this policy when the involved employee benefited financially or in some other personal manner through the exercising of law enforcement activity. For example, an officer may have used the position to gain benefits or services without paying for them. As another example, an officer may have improperly accessed Department databases for personal reasons.

Here, however, NE#1 received no pecuniary gain from his work at the SPRA. OPA confirmed that he was not paid for his time. He further achieved no discernable personal benefit consistent with the precedent cases. The only benefit he appeared to receive was furthering the work of the SPRA, which, as he posited, could be argued to have benefited the Department and its employees. This is the case even if his work for the SPRA undermined some of the quality of his SPD employment and his impact as a leader.

Moreover, the Department was aware of his work for the SPRA and never informed him that it was improper. Indeed, as NE#1 explained, a number of other SPD employees had worked in various capacities for the SPRA, including as past presidents. In addition, while the Assistant Chief said that she explicitly informed NE#1 that his work for the SPRA needed to come second to and could not compromise his SPD work, she never told him that he was prohibited from being affiliated with the SPRA. Lastly, none of this was documented in writing and NE#1 shared a different perspective concerning what was communicated to him by his chain of command.

Given the above, OPA finds insufficient evidence to determine that NE#1 used his position for personal gain and, as such, recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.



From OPA's review of the evidence, there is no indication that NE#1 falsely completed timesheets or purposefully concealed his calendar. In addition, he was forthcoming about what he did and why he did it, including informing his chain of command of his work for the SPRA in two separate memos.

For these reasons, OPA finds no basis to conclude that NE#1 engaged in dishonesty. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #4

4.010 - Employee Time Off 1. Employee Time Off is Regulated

SPD Policy 4.010-POL-1 provides guidance on how Department employees are permitted to use time off.

OPA's investigation clarified that the gravamen of this case is that NE#1 was rarely if ever physically in the office and the possibility that, because of this, he violated SPD policy by failing to be an adequate supervisor. While the anonymous Complainant alleged that NE#1 was "stealing time," the evidence does not support a finding that this occurred. Notably, virtually all of the witnesses interviewed confirmed that NE#1 was responsive to their calls and emails. Moreover, both the criminal and administrative investigations confirmed that NE#1 regularly logged into SPD's system and, often, did so six days per week. In addition, while there were six days that NE#1 was paid but did not log into the system, there were 58 occasions when he logged in and performed work on non-workdays. Given this, OPA finds no evidence that he abused leave time or other time off.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #5

1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command

SPD Policy 1.020-POL-7 generally mandates that supervisors take responsibility for every aspect of their command. The policy directs the following: "Employees in a supervisory role will coordinate and direct subordinates and allocate resources to achieve the operations objective." (SPD Policy 1.020-POL-7.) The policy further instructs that: "Employees in a supervisory role will perform the full range of administrative functions relying upon policy, direction, training, and personal initiative as a guide for themselves and their command in achieving the highest level of performance possible." (*Id.*) The policy provides no guidance as to expectations for specific ranks or roles. It further provides no direction concerning schedule flexibility for Captains or explicitly sets the expectation they be present in the office. Lastly, the policy provides no explanation of how it expects its supervisors to operate and what qualities it expects them to exude.

Unfortunately, NE#1 is not the first SPD captain to be absent from the workplace. Indeed, it is commonly understood throughout the Department that such conduct has been, over time, a regular occurrence. As OPA has heard many officers and sergeants note, there often seems to be an inverse correlation between the higher the rank achieved, and the time physically spent in the office. OPA is careful to note that, based on its personal observations, this is not a universal truth, as there are many supervisors who are extremely dedicated to their work and put in long hours,



often without overtime or any special recognition. However, the reality remains that NE#1's conduct is not an anomaly and that this occurs more often than it should within the Department.

OPA shares the concerns articulated by NE#1's supervisors and his subordinates regarding his lack of presence at work. OPA believes that consistently not being at the office sets a poor example and demonstrates subpar leadership. Indeed, while OPA agrees with NE#1 that management does not simply mean walking around from cubicle to cubicle, it does entail being physically available to make genuine human connections and to build a sense of community and cohesiveness within a unit. Notably, OPA cannot understand how a supervisor could possibly provide organizational guidance and motivation, as well as to convey a mission, vision, value, and work ethos, without being present to do so.

That being said and as discussed above, SPD policy does not provide any guidance on or mandates concerning supervisory presence in the office or even what is expected from a Captain on a day-to-day basis. Further, as this case exemplifies, documentation of such conduct, as well as the written setting of expectations, is often lacking and, in many cases, does not exist altogether. This makes it extraordinarily difficult to hold absentee supervisors accountable. This is particularly the case in non-patrol units where schedules are much more flexible, and the presence of staff is significantly less monitored.

This leads OPA to consider the manner in which employees become leaders within the Department and whether and how this is failing to produce desired outcomes. SPD's selection of leaders is similar to the process used by most if not all other law enforcement agencies. Employees take a written test and then an oral examination. The scores of those tests are combined and service credits (reflecting the length of time worked) and other preferences (such as a veteran's preference) are applied. This total score is how potential future leaders are ranked and, with rare exceptions, they are selected in that order. While the tests are comprehensive, well planned, well run, and properly evaluate job knowledge, written ability, and competence in oral presentation, they do not and cannot assess an individual's current leadership ability or future growth potential or performance as a leader. OPA believes this to be problematic.

In addition to the identification of gaps in policy and in the selection of SPD leaders, this case also brings to the forefront flaws with Department culture. It should never be that, as referenced above, the senior leaders work less than those they are supposed to be guiding and teaching. This does nothing but build animosity between the ranks and the lack of trust and confidence by employees in those that are expected to be moving the organization forward. It also does a tremendous disservice to the Department and represents a poor usage of taxpayer monies, which provide for generous salaries.

Ultimately, NE#1's conduct did not meet the personal standard that OPA has for SPD leaders, as well as the expectations clearly held by NE#1's supervisors and direct reports. Moreover, in OPA's estimation, it almost certainly fell short of the standard held by virtually all of SPD's rank and file. However, when looking at the plain language of the policy and given the lack of any written expectations or warnings issued to NE#1, OPA cannot find that he engaged in misconduct.

In reaching this finding, OPA also considered what issuing a Sustained finding against NE#1 would achieve in this case. Realistically, OPA feels that it would do very little. This case is bigger than NE#1. It is emblematic of larger issues that have been allowed to fester over time and that have negatively impacted the Department. These issues need to be fixed and Department leaders need to lead.



Policing is changing. SPD has the opportunity to rethink virtually everything that it does and has done. This includes the expectations it holds for its supervisors, how it trains and teaches them, how it holds them accountable, and how it selects them. OPA strongly encourages SPD to seize this opportunity and, in furtherance of this, issues the below Management Action Recommendations. In making these recommendations, OPA is cognizant of the financial limitations faced by the Department and the obligation to collectively bargain with unions; however, this should be and cannot be an impediment to needed positive organizational change.

- **Management Action Recommendations:**

1. SPD should create a new framework of policies governing supervisors.
 - (a) These policies should clearly set forth the expectation that supervisors are expected to work set schedules, including being physically present in the office.
 - (b) The policies should outline the minimum qualifications and responsibilities for each rank.
 - (c) The policies should contain sufficient standards to allow OPA and the chain of command to hold supervisors accountable for performance issues.
2. SPD should require supervisors to, when appropriate, provide written performance expectations and to consistently document deficiencies in performance.
3. SPD should rethink the manner in which it conducts performance evaluations to ensure that employees are being critically reviewed.
4. SPD should mandate yearly anonymized 360 performance evaluations for Lieutenants, Captains, and Chiefs.
 - (a) The results of these assessments should be used to develop and improve performance and managerial, communication, and leadership skills.
 - (b) Failure to maintain minimum standards should result in actual consequences, including, but not limited to, demotion.
 - (c) Whether an employee may promote to a higher position should rest, in part, on the outcomes of these assessments.
5. SPD should reevaluate the manner in which it selects supervisors for promotion.
 - (a) SPD should develop metrics that, in as an objective manner as possible, evaluate current leadership ability and future leadership potential.
 - (b) SPD should also develop metrics that grade potential supervisors on essential leadership traits such as kindness, empathy, work ethic, and sacrifice.
 - (c) These metrics should be given a score that is combined with the other raw scores to rank candidates.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)



From OPA's review of the evidence, there is no indication that any Department supervisor violated policy by not timely reporting misconduct on NE#1's part. First, the evidence was unclear as to whether he was actually engaging in misconduct or whether it was a performance issue. Second, the chain of command did try to address the matter internally prior to making an OPA referral, OPA cannot say that this decision was inappropriate based on the circumstances of this case.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**